



07-CV-00222-CMP

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON, SEATTLE

OMNI INNOVATIONS, LLC, a  
Washington Limited Liability  
company; and JAMES S. GORDON,  
JR., a married individual,

Plaintiffs,

v.

APOLLO GROUP, INC. an Arizona  
corporation; UNIVERSITY OF  
PHOENIX, INC., an Arizona  
corporation; and JOHN DOES, I-X,

Defendants,

NO.  
**CV 07-0222** RSM

COMPLAINT FOR PENALTIES  
AND DAMAGES UNDER THE CAN-  
SPAM ACT OF 2003, THE  
WASHINGTON CEMA (RCW 19.190  
ET SEQ.) AND CPA (RCW 19.86);  
AND INJUNCTIVE RELIEF

PARTIES, JURISDICTION, VENUE

1. Plaintiff OMNI INNOVATIONS, LLC, (hereinafter "OMNI") is a Washington limited liability company duly licensed and registered with the State of Washington, with its principal place of business in Franklin County, Washington.
2. Plaintiff JAMES S. GORDON, JR., (hereinafter "GORDON") is a married individual residing in Franklin County, Washington.
3. On information and belief, Plaintiffs allege that Defendant APOLLO GROUP, INC., ("APOLLO") is a publicly traded Arizona corporation, with its principal

COMPLAINT FOR DAMAGES, PENALTIES, ETC. -1  
GORDON v. APOLLO GROUP/U OF PHOENIX, ET  
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1 places of business in the state Arizona, doing business as 'University of Phoenix',  
2 'University of Phoenix Online', and is the registrant of and uses numerous internet  
3 domains utilizing the names "universityofphoenix", "universityofphoenixonline",  
4 "uopx", "uoponline", "uop" and other domains.

5 4. On information and belief, Plaintiffs allege that Defendant **UNIVERSITY OF**  
6 **PHOENIX, INC.** is an Arizona corporation, with its principal place of business in  
7 the state of Arizona, and is a wholly owned subsidiary, or division of Apollo Group,  
8 Inc.

9 5. Jurisdiction is proper pursuant to 28 U.S.C. §1331 (federal question) and 28 U.S.C.  
10 §1332 (diversity).

11 6. This Court has supplemental jurisdiction of state law claims pursuant to U.S.C. §  
12 1367.

13 7. Venue is proper pursuant to 28 U.S.C. §1391.

14 8. From at least August 2003 through May 2005, Plaintiff GORDON provided and  
15 enabled computer access for multiple users to a computer server that provides access  
16 to the Internet.

17 9. From and after May 2005, Plaintiff OMNI provided and enabled computer access for  
18 multiple users to a computer server that provides access to the Internet.

19 10. At all relevant times herein both Gordon and Omni were an "internet access service"  
20 ("IAS") as defined under 15 USC 7702(11) and 47 USC 231(e)(4), and an  
21 "interactive computer service" ("ICS") under RCW 19.190.010(8).

22 11. The domain names hosted and served by Plaintiffs IAS/ICS include domains owned  
23 by third-party customers of Plaintiffs' IAS/ICS, and also include domains owned by  
24 Plaintiffs. These domains include: anthonycentral.com, chiefmusician.net,  
25 ehahome.com, itdidnotendright.com, jammtomm.com, jaycelia.com, celiajay.com,  
jaykaysplace.com, rcw19190020.com, and gordonworks.com (collectively the  
"Domains" and individually and generically a "Domain").

12. At all times material hereto, for the Domains and each of them, the information that all e-mail addresses at each Domain (the "Recipient Addresses") belong to Washington residents was and is available upon request from the registrant of each Domain, each registrant being a Washington resident and each Domain being registered with a Washington address.
13. During the time period of approximately August 2003 through present, Plaintiffs received at the Domains numerous electronic-mail messages sent and/or initiated by or on behalf of Defendant. (collectively the "E-mails" or individually and generically as an "E-mail").
14. The E-mails, and each of them, were received by Plaintiffs' servers serving the Domains.
15. Each of the E-mails misrepresents or obscures information in identifying the point of origin or the transmission path thereof, contains header information that is materially false or materially misleading, fails to include, or contain a viable physical address in the body of the email, fails to adequately identify the E-mail as a commercial solicitation, and/or was sent to and received by Plaintiffs subsequent to notice provided to Defendants to cease and desist sending unwanted, and unlawful E-mail.
16. Defendant initiated the transmission of the E-mails, and each of them. In the alternative, Defendant conspired or otherwise acted in collusion with another or others or assisted another or others to transmit the E-mails, and each of them.
17. At all times material hereto, Defendants knew or had reason to know that the Recipient Addresses, and each of them, were and are held by a Washington resident.

**FIRST CAUSE OF ACTION – CAN-SPAM ACT**

**15 U.S.C. §7701 et seq.**

18. On the basis of the facts set forth hereinabove, Defendants initiated the transmission of the E-mails, and each of them, to a protected computer in violation of 15 U.S.C. §7704(a), causing damage to Plaintiffs GORDON and OMNI as the providers of the

Internet access service receiving each such E-mail, and entitling Plaintiffs to statutory damages of \$100.00 per each such E-mail, as provided in 15 U.S.C. §7706 (g) (3).

19. Defendants did willfully and knowingly so act in violation of the provisions of 15 U.S.C. §7701 et seq.

## SECOND CAUSE OF ACTION – CEMA

### RCW 19.190.010 - .070

20. On the basis of the facts set forth hereinabove, Defendants initiated, conspired with another to initiate, or assisted the transmission of the E-mails, and each of them, in violation of RCW 19.190.020, causing damage to Plaintiffs GORDON and OMNI as the interactive computer service receiving each such E-mail in the amount of \$1,000 for each such E-mail, as provided in RCW 19.190.040 (2).

## THIRD CAUSE OF ACTION – CONSUMER PROTECTION ACT

### Ch. 19.86 RCW

21. On the basis of the facts set forth hereinabove, Defendants initiated the E-mails, and each of them, in violation of RCW 19.190.030 and Chapter 19.86 RCW, causing damage to Plaintiffs GORDON and OMNI as the interactive computer service receiving each such E-mail in the amount of \$1,000 for each such E-mail, as provided in RCW 19.190.040 (2).

## REQUEST FOR RELIEF

Plaintiff respectfully requests the following relief:

1. Entry of a Judgment against the Defendant in the amount of \$1,100 per E-mail, plus such other and further damages as may be proved at trial, plus treble damages to the extent permitted by Chapter 19.86 RCW and to the extent permitted by 15 U.S.C. §7706 (g) (3) (C), plus prejudgment and post-judgment interest at the highest rate permitted by law,

COMPLAINT FOR DAMAGES, PENALTIES, ETC. -4  
GORDON v. APOLLO GROUP/U OF PHOENIX, ET  
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1 plus cost of suit and reasonable attorney fees pursuant to Chapter 19.86 RCW and 15  
2 U.S.C. §7706 (g) (4);

3 2. Entry of a permanent injunction against the Defendant prohibiting the Defendant from  
4 sending or causing to be sent electronic mail messages of any kind or nature to e-mail  
5 addresses at the Domains, hereinabove.

6 3. Such other and further relief as the Court deems just and equitable in the premises.  
7

8 RESPECTFULLY SUBMITTED this 8<sup>th</sup> day of February, 2007.

9  
10 i.JUSTICE LAW, P.C.

DOUGLAS E. MCKINLEY, JR

Attorney at Law

11 /S/ Robert J. Siegel

/S/ Douglas E. McKinley, Jr.

12 Robert J. Siegel, WSBA #17312

Douglas E. McKinley, Jr., WSBA#20806

13 Attorney for Plaintiffs

Attorney for Plaintiffs

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